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14 *Ramparts Inc. dba Luxor Hotel-Casino*

15 LOCAL JOINT EXECUTIVE BOARD OF  
16 LAS VEGAS; CULINARY WORKER'S  
17 UNION, LOCAL 226

18 Plaintiff & Petitioners,

19 v.

20 RAMPARTS, INC. dba LUXOR HOTEL/  
21 CASINO

22 Defendant & Respondents.

23 \* \* \* \*

24 RAMPARTS, INC. dba LUXOR HOTEL/  
25 CASINO

26 Counter-Claimant,

27 v.

28 LOCAL JOINT EXECUTIVE BOARD OF  
LAS VEGAS; CULINARY WORKER'S  
UNION, LOCAL 26

Counter-Defendant.

Case No.: 2:12-cv-01963-GMN-CWH

**RESPONDENT'S/COUNTER-  
CLAIMANT'S REPLY TO  
PETITIONERS'/COUNTER-  
DEFENDANTS' SUPPLEMENTAL  
AUTHORITY IN SUPPORT OF MOTION  
TO DISMISS COUNTERCLAIM AND  
MOTION TO CONFIRM AND ENFORCE  
A LABOR ARBITRATION AWARD**

Respondent/Counter-Claimant RAMPARTS, INC. dba LUXOR HOTEL CASINO

("Respondent," "Counter-Claimant," or "Luxor") hereby submits its reply to Petitioners/Counter-  
Defendants LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS and CULINARY

1 WORKER'S UNION, LOCAL 26's ("Petitioners," "Counter-Defendants" or "Union")  
2 Supplemental Authority in Support of Motion to Dismiss Counterclaim and Motion to Confirm  
3 and Enforce a Labor Arbitration Award.

4 **DISCUSSION**

5 In Petitioners' Notice of Supplemental Authority (the "Notice"), Petitioner cites to the  
6 Fourth Affirmative Defense in Respondent's Answer for the proposition that Respondent alleges  
7 that the arbitrator "exceeded the scope of his authority." *Notice p.2.*<sup>1</sup> While that is one argument,  
8 Respondent also makes the following arguments in support of its opposition and counterclaim:  
9

- 10 1. The labor arbitration award that Respondent seeks to confirm was procured by undue  
11 means;
- 12 2. There was evident partiality in the Arbitrator;
- 13 3. While conducting the arbitration hearing and preparing his award, the Arbitrator  
14 engaged in misbehavior by which the rights of Respondent have been prejudiced;
- 15 4. The Arbitrator imperfectly executed his powers in that a mutual, final, and definite  
16 award upon the subject matter submitted was not made;
- 17 5. The labor arbitration award that Petitioners seek to confirm does not draw its essence  
18 from the Collective Bargaining Agreement, governing the resolution of disputes  
19 between the parties, and in rendering the award the Arbitrator impermissibly dispensed  
20 his own brand of industrial justice; and
- 21 6. The Arbitrator's actions are subject to the doctrine of *functus officio*, as the Arbitrator has  
22 sought to expand his power or jurisdiction after he rendered Award I.

23 In any event, the Notice brings to the court's attention the following case: *Oxford Health*  
24 *Plans LLC v. Sutter*, 569 U.S. ---, No. 12-135 (2013). In *Oxford Health Plans* the United States  
25

26  
27  
28 <sup>1</sup> Respondent is unable to provide page/line citations because Petitioners have failed to file its  
Notice on lined paper.

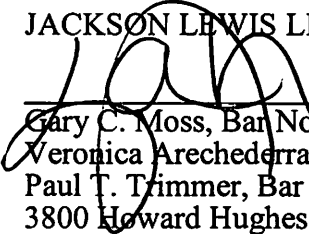
1 Supreme Court (the "Court") decided whether an arbitrator, who was interpreting a contract,  
 2 exceeded his authority under the Federal Arbitration Act (the "FAA"). As applied to the instant  
 3 facts, the case is unremarkable.

4 First, Petitioners argued in their Memorandum of Points and Authorities in Support of its  
 5 Motion to Dismiss Counterclaim and Motion to Confirm and Enforce a Labor Arbitration Award  
 6 (No. 10) ("MPA") that the FAA is inapplicable. *MPA pp.7-8.*<sup>2</sup> To the extent that Respondent is  
 7 presenting *Oxford Health Plans* as authority in support of its Petition to Confirm a Labor  
 8 Arbitration Award (No. 1) or Petitioner's Motion to Dismiss Counterclaim and to Confirm and  
 9 Enforce a Labor Arbitration Award (No. 9), the authority should be rejected due to Petitioners'  
 10 admission that the FAA is inapplicable to the instant facts.

11  
 12 Second, *Oxford Health Plans* involved facts wherein an arbitrator was asked to interpret a  
 13 specific contract provision. On the contrary, here, the arbitrator was asked to determine whether  
 14 the grievant was terminated for just cause. The crux of Respondent's case is not contract  
 15 interpretation but its denial of a fair hearing by a biased arbitrator, which resulted in an invalid  
 16 award.  
 17

18 Dated this 9 day of August, 2013.

JACKSON LEWIS LLP

  
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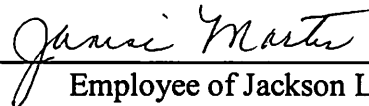
27  
 28 <sup>2</sup> Again, Respondent is unable to provide page/line citations because Petitioners have failed to file  
 its MPA on lined paper.

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Jackson Lewis LLP and that on this 9 day of August 2013, I caused to be served a true and correct copy of the above and foregoing **DEFENDANT/COUNTER-CLAIMANT'S REPLY TO PLAINTIFFS/COUNTER-DEFENDANT'S SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION TO DISMISS COUNTERCLAIM AND MOTION TO CONFIRM AND ENFORCE A LABOR ARBITRATION AWARD** via ECF filing, properly addressed to the following:

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Attorneys for Plaintiffs/Counter-Defendants

  
Employee of Jackson Lewis, LLP

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